



August 11, 2000

Ms. Elaine S. Hengen  
Assistant City Attorney  
The City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR2000-3063

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138031.

The City of El Paso Police Department (the "department") received three requests from the same requestor for "a complete copy of the report" for the cases numbered 00-049317, 00-143016, and 00-144134. You have provided for our review information that is responsive to the request, consisting of three offense reports. You indicate that the department has released to the requestor "the first page of each case" with certain information redacted. The department has also released a "complaint affidavit," a "supplement that lists the arrestee," and a "magistrate's emergency order." You assert that the remainder of the requested information is excepted from public disclosure under section 552.108 of the Government Code. We have reviewed the submitted information and considered the exception you assert.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
- (2) it is information that deals with the detection,

investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

...

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). With respect to the information relating to case numbers 00-143016 and 00-144134, you represent that the investigations "are still pending." With respect to the information relating to case number 00-049317, you state that the "investigation in that case was closed at one time, but may be reopened in light of the incident reported in case no. 00-144134[.]" Upon careful review of the information at issue, we find that you have shown that the release of the requested information at this time would interfere with the detection, investigation or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978). Thus, we conclude that most of the requested information may be withheld under section 552.108(a)(1).

As you acknowledge, information normally found on the front page of an offense report is generally considered public. *Houston Chronicle*, 531 S.W.2d at 177; Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Gov't Code § 552.108(c); *see* Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). As

stated above, you represent that this information has already been released to the requestor.<sup>1</sup>

In summary, the department may withhold the information at issue pursuant to section 552.108 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

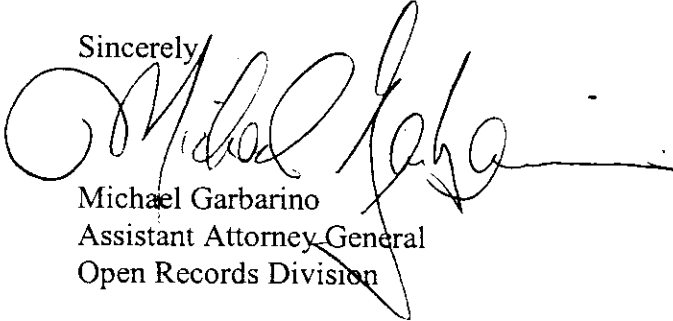
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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<sup>1</sup>You have redacted the telephone number of the complainant from each of the three offense reports, as well as a portion of the narrative on the first page of the report for case number 00-143016. We agree that the information you have redacted is not among the types of information that the department is required to release pursuant to section 552.108(c) of the Government Code. See Open Records Decision No. 127 at 4 (1976) (describing the types of "front page" information in an offense report that is not excepted from disclosure by section 552.108).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino", with a long horizontal flourish extending to the right.

Michael Garbarino  
Assistant Attorney General  
Open Records Division

Ref: ID# 138031

Encl. Submitted documents

cc: Mr. Theodore Castillo  
P.O. Box 3343  
El Paso, Texas 79923  
(w/o enclosures)